

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 97-7786

CLEM CLEMMONS,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
W. Earl Britt, Senior District Judge.
(CR-92-132-BR, CA-97-414-5-BR)

Submitted: July 31, 1998

Decided: August 31, 1998

Before MICHAEL and MOTZ, Circuit Judges, and
HALL, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Clem Clemmons, Appellant Pro Se. Harold Franklin Askins, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Clem Clemmons appeals from the district court's order dismissing as untimely his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). We grant a certificate of appealability and vacate the district court's decision. The envelope in which Clemmons first mailed his § 2255 motion bears a postmark of April 21, 1997.* Under Houston v. Lack, 487 U.S. 266 (1988), the motion is deemed filed when Clemmons handed it to prison officials for mailing. See Burns v. Morton, 134 F.3d 109, 112-13 (3d Cir. 1998); Lewis v. Richmond City Police Dep't, 947 F.2d 733, 735-36 (4th Cir. 1991). Because Clemmons' § 2255 motion was filed before the expiration of the one-year limitation period for filing § 2255 motions, we vacate the district court's order and remand for further proceedings. See Brown v. Angelone, ___ F.3d ___, Nos. 96-7173, 96-7208, 1998 WL 389030, at *6 (4th Cir. July 14, 1998). We deny Clemmons' motion for appointment of counsel and motion for production of transcripts at government expense.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED

*Due to an error in the post office box number, the first envelope was returned to Clemmons. He resent the motion on May 21, 1997, and it was received in the district court on May 23, 1997.